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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,597	10/26/2001	Curtis W. Heisey	SYNER-177XX	6523
207	7590	12/17/2004	EXAMINER	
WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109			KISS, ERIC B	
			ART UNIT	PAPER NUMBER
			2122	

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/016,597	Applicant(s) HEISEY ET AL.	
	Examiner Eric B. Kiss	Art Unit 2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-19 have been examined.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Applicant has only acknowledged the duty to disclose information under 37 CFR 1.56(a). The duty to disclose information under 37 CFR 1.56, in its entirety (including 37 CFR 1.56(a-e)), must be acknowledged.

Specification

3. The abstract of the disclosure is objected to because the first four lines contain a sentence fragment. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 3-8 and 11-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "said embedded device abstraction software object" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim. In the interest of compact prosecution, "a target" in line 1 of claim 3 is subsequently interpreted as --an embedded--, for the purpose of further examination.

Claim 4 recites the limitation "said embedded device abstraction software object" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim. In the interest of compact prosecution, claim 4 is subsequently interpreted as being dependent from claim 3 rather than claim 2, for the purpose of further examination.

Claim 8 recites the limitation "The system of claim 8" in line 1. There is insufficient antecedent basis for this limitation in the claim. In the interest of compact prosecution, claim 8 is subsequently interpreted as being dependent from claim 7 instead of being circularly dependent, for the purpose of further examination.

Claim 8 further recites the limitation "said embedded device abstraction software object" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim. In the interest of compact prosecution, in addition to the interpretation applied above, claim 7 is subsequently interpreted as being dependent from claim 3 instead of being dependent from claim 1, for the purpose of further examination.

Claim 11 recites the limitation "said embedded device abstraction software object" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim. In the interest of compact prosecution, "a target" in lines 2-3 of claim 11 is subsequently interpreted as --an embedded--, for the purpose of further examination.

Claim 16 recites the limitation "said embedded device abstraction software object" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim. In the interest of compact prosecution, parent claim 15 is subsequently interpreted as being dependent from claim 11 instead of being dependent from claim 10, for the purpose of further examination.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-17 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S.

Patent Application Publication No. 2003/0126195 (Reynolds et al.).

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As per claim 1, *Reynolds et al.* discloses:

control program code responsive to at least one user command for issuing a plurality of device commands including at least one device command to replace a code image in an embedded device (see, for example, paragraph [0508]);

monitoring program code, asynchronous with respect to said control program code, for generating at least one event indication in response to a change of at least one predetermined attribute associated with said embedded device and forwarding said at least one event indication to said control program code (see, for example, paragraph [0504]); and

said at least one device command replacing said code image in response to said at least one event indication (see, for example, paragraph [0505]).

As per claim 2, *Reynolds et al.* further discloses the control program code and the monitoring program code being independent threads of execution (see, for example, paragraph [0503]).

As per claim 3, *Reynolds et al.* further discloses an embedded device abstraction software object that generates at least one event to said monitoring program code in response to information obtained from said embedded device (see, for example, paragraph [0508]).

As per claim 4, *Reynolds et al.* further discloses the embedded device abstraction software object generating at least one event to said control program code in response to information obtained from said embedded device (see, for example, paragraph [0508]).

As per claim 5, *Reynolds et al.* further discloses said information obtained from said embedded device including at least one value from a Management Information Base (MIB) stored on said embedded device (see, for example, paragraph [0119]).

As per claim 6, *Reynolds et al.* further discloses said embedded device abstraction software object further operating to receive said at least one command from said control program code, and, in response, send at least one corresponding query to said embedded device (see, for example, paragraph [0512]).

As per claim 7, *Reynolds et al.* further discloses said monitoring program code operating to periodically check the state of at least one attribute of said embedded device (see, for example, paragraph [0521]).

As per claim 8, *Reynolds et al.* further discloses said monitoring program code operating to periodically check the state of at least one attribute of said embedded device by sending at least one command to said embedded device abstraction software object (see, for example, paragraph [0521]).

As per claim 9, *Reynolds et al.* further discloses a state machine represented in program code accessible to said control program code (see, for example, paragraphs [0734] through [0737]).

As per claims 10-17, these are method versions of the claimed system discussed above (claims 1 and 3-9), wherein all limitations have been addressed as set forth above.

As per claim 19, this is a means-plus-function version of the claimed system discussed above (claim 1). Further, *Reynolds et al.* discloses equivalent structure to that which is specified in Applicant's disclosure (see, for example, Figs. 1 and 2a-2j).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0126195 (Reynolds et al.) in view of U.S. Patent No. 6,549,943 to Spring.

As per claim 18, this is a computer program product version of the claimed system discussed above (claim 1). Although *Reynolds et al.* discloses such functionality (see the disclosure applied above to claim 1) but fails to expressly disclose the use of such a computer program product for implemented the prescribed system functionality, the use of such products is well known. For example, *Spring* teaches the use of such a product in a system for network management using abstract device descriptions (see, for example, col. 64, line 52, through col. 66, line 27). Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to include such a computer program product as a well known and established means of storing and transporting computer program data for a computer-implemented method.

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Conclusion


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric B. Kiss whose telephone number is (571) 272-3699. The Examiner can normally be reached on Tue. - Fri., 7:00 am - 4:30 pm. The Examiner can also be reached on alternate Mondays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Tuan Dam, can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EBK/~~EBK~~
December 10, 2004


TUAN DAM
SUPERVISORY PATENT EXAMINER